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Attorneys for Defendants THE AMERICAN
SOCIETY FOR REPRODUCTIVE
MEDICINE and SOCIETY FOR ASSISTED
REPRODUCTIVE TECHNOLOGY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OPTIONS NATIONAL FERTILITY
REGISTRY, a California Corporation, and
JESSICA and class of plaintiffs believed to be
similarly situated (women egg donors whose
eggs were allegedly given to unknown and
unauthorized recipients via "egg sharing"
without their informed consent, in violation of
an existing legally binding contract),

Plaintiffs,

vs.

THE AMERICAN SOCIETY FOR
REPRODUCTIVE MEDICINE; SOCIETY
FOR ASSISTED REPRODUCTIVE
TECHNOLOGY; DOES 1 through 102
(REGISTERED INFERTILITY
PHYSICIANS) AND DOES 103 through 1500
(FERTILITY CLINICS AND ASSOCIATED
PROFESSIONAL DEFENDANTS),

Defendants.

Case No. C 07 5238 JF

Complaint Filed: October 12, 2007

**AMENDED NOTICE OF MOTION AND
MOTION OF DEFENDANTS AMERICAN
SOCIETY OF REPRODUCTIVE
MEDICINE AND SOCIETY FOR
ASSISTED REPRODUCTIVE
TECHNOLOGY TO DISMISS
PLAINTIFFS' COMPLAINT FOR LACK
OF SUBJECT MATTER JURISDICTION
(FRCP 12(b)(1)) OR ALTERNATIVELY,
MOTION TO DISMISS FIRST, SECOND,
AND THIRD CAUSES OF ACTION FOR
FAILURE TO STATE A CLAIM (FRCP
12(b)(6)) and MOTION TO DISMISS
CLASS CLAIMS (FRCP 12(b)(6)) OR
STRIKE CLASS ALLEGATIONS (FRCP
12(f))**

Date: September 5, 2008
Time: 9:00 a.m.
Ctm.: 3

Trial Date: None.

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on **September 5, 2008**, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 3 of this court, located at the 280 S. First Street, San Jose, California 95113, defendants The American Society for Reproductive Medicine and the Society for Assisted Reproductive Technology will and hereby does move the court to dismiss plaintiff's Complaint in its entirety for lack of subject matter jurisdiction, pursuant to Federal Rules of Civil Procedure 12(b)(1) *or, in the alternative*, moves the court to (1) dismiss or strike the portion of the first claim for breach of oral contract and dismiss the second claim for intentional interference with contractual relations because the claims fail to state a claim upon which relief can be granted, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f); (2) dismiss the third claim for fraud because it does not plead fraud with sufficient particularity as required by Federal Rules of Civil Procedure 9(b) and fails to state a claim upon which relief can be granted, pursuant to Federal Rules of Civil Procedure 12(b)(6); and (3) dismiss the class action claim for failure to state a claim upon which relief can be granted, pursuant to Federal Rules of Civil Procedure 12(b)(6) or strike the class action allegations because the Complaint fails to plead the requirements set forth in Rule 23, pursuant to Federal Rules of Civil Procedure 12(f).

The allegations in the Complaint that are the subject of the motions to strike are as follows:

1. Complaint 5:7 –

“and oral”

2. Complaint 2:9-13 –

“2. Plaintiffs (intentionally omitted) JESSICA and class of plaintiffs believed to be similarly situated is a group of women egg donors whose eggs were allegedly given to unknown and unauthorized recipients via an industry-wide practice allegedly known as “egg sharing” without their informed consent, and in violation of an existing legally binding contract.”

This motion will be based upon this Notice of Motion and Motion, on the Memorandum of Points and Authorities, Declaration of Nancy Frankel, Request for Judicial

1 Notice, on the pleadings and papers filed herein, and on such other and further matters as the court
2 may deem just and proper at the hearing.

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4 DATED: June 17, 2008

MUSICK, PEELER & GARRETT LLP

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6 By: 

Catherine M. Lee
Attorneys for Defendants THE AMERICAN
SOCIETY FOR REPRODUCTIVE
MEDICINE and SOCIETY FOR ASSISTED
REPRODUCTIVE TECHNOLOGY